

In the name of god most gracious most merciful

Republic of Iraq
Federal supreme court
Ref. 93/federal/media /2015



Kurdish text

The Federal Supreme Court (F S C) has been convened on 16.12.2015 headed by Judge Madhat Al-Mahmood and membership of Judges Farouk Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-nagshabandi, Aboud Salih Al-temimi, Michael Shamshon Qas Georges and Hussein Abbas Abu AL-Temman who authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: (waw. kha. heh. mim.) his agent (ta. kaf. zin.).

The Defendant: Speaker of House of Representatives/ being in this capacity his Jurists (sin. ta. yeh.) and (ha. mim. sin.).

The Claim:

The plaintiffs' agent claimed in the case No. (93/federal/2015) that House of Representatives in the session holed on 13/8/2015 No. (12) before decided He decided the validity of the membership of the MP who objected to her membership (kha. jim. mim. jim.) alternative to the MP who became a minister (ain. mim. shin.) and rejected the objection of his client submitted to the House of Representatives on 24/1/2015 and based on article (52/1st) of the Constitution and therefore his client challenges the decision of the House of Representatives to the validity of the membership of the MP (objecting to the validity of her membership) for the following reasons:

1. The challenged decision contained a clear violation of the text of article (14) of the Electoral Law and that his client obtained the (1st) sequence of the reserve list for (11185) votes, while the MP who objected to the validity of her membership received (3503) votes, making his client the owner of the seat instead of MP who became a minister (ain. mim. shin.) and contrary what is stated in the electoral law is a constitutional violation contrary to the principle of "the supremacy of the Constitution".
2. That his client finds his right to fill the seat on the basis of article (49/1st) of the Constitution, which stipulated (The House of Representatives shall consist of a number of members, at a ratio of one seat per 100,000 Iraqi persons representing the entire Iraqi people.) Therefore, the popular representation of his client is the largest and the contested decision violates the provisions of articles (20 and 46) of the Constitution.
3. The Replacement Law established general cases of replacement and did not specify the member who replaces the retired deputy, but only to be from the same list under (article 2nd of it) and since his client is from the same list and is the same province, he is considered the biggest loser in his reserve list.
4. His client was one of the winners of the list of the state of law for the province of Baghdad and for the purpose of (completing the quota of women), he was excluded after he became minister of MP (ain. mim. shin.) and the performance of MP (kha. jim. mim. jim.) oath at the numbered session (15) on 16/9/2014 and (25%) of the quota of women was achieved in the House of Representatives.

This is fixed in the database of the Iraqi Parliament, so his client finds his right to the alternate seat because he was among the winners in the list of the state of law, pursuant to the provisions of article (4/2) of the Civil Law (if the Inhibitor is removed, the forbidden is returned) this is a general rule that does not violate with the provisions of the Constitution, so it is possible to apply the provisions of article (14/3rd) of the Law No. (45 of 2013) and requested in the end of the rule for decision to annul the

decision of the House of Representatives to the validity of the membership of the MP (kha. jim. mim. jim.) and to assign the alternative seat to his client (waw. kha. heh. mim.), who is the plaintiff in this case instead of the MP who became a minister (ain. mim. shin.) and the defendant/ being in this capacity charging all fees and costs of the lawyers. After registering the case under the provisions of article (1/3rd) of the FSC's Bylaw No. (1) of 2005 and completing the required procedures in accordance with paragraph (1st) of article (2), of the same regulations. 16/12/2015 was set as the date for the argument, in which the court was formed, and the plaintiff and defendant's attorneys attended and began the argument immanence and public, and after each party repeated its statements and defences, the court completed its scrutiny, the end of argument has been made clearly and the decision is recited publicly.

The Decision :

After scrutiny and deliberation by the FSC found that the plaintiff prosecutes case No. (93/federal/2015) (In the legal period) requested (the rule to annulment the decision of the House of Representatives about the validity the membership of the MP objector (against) (kha. jim. mim. jim.) and assign the alternative parliamentary seat to the plaintiff (waw. kha. heh. mim.) instead of the MP who became a minister (ain. mim. shin.) the plaintiff argued that the decision taken at the session No. (12) on 13/8/2015 violated the text of article (14) of the Electoral Law No. (45 of 2013) which state (that the seats within the list are distributed by rearranging the sequence of candidates based on the number of votes obtained by each of them, and the first winner will receive the highest votes and so on for the rest of the candidates) The plaintiff got (11185) votes and a sequence of (1) on the reserve list)). The FSC found that the MP (ain. mim. shin.) who became a minister, his parliamentary seat was filled by (kha. jim. mim. jim.) as they belonged to the same political bloc (Alliance of the State of Law), the same entity (Mustaqilawn) and the same province (Dhi qar) its replacement applies to article (2nd),

paragraph/ 2) of the Replacement Law No. (6 of 2006), its text (if the vacant parliamentary seat is within the seats of the province specified by the electoral law, it shall be replaced by the bloc to which the member who is replaced belongs to the province's list). The plaintiff, although from the same list, but his bloc and province are different from the bloc and province, which became a minister where he belongs to the (Alliance of the State of Law/ the entity of the Islamic Dawa Party) from Baghdad province does not apply to him the provisions of article (2) of the replacement law above and applicable to the case presented in this case, there is no need to rely on election law (No. 45 of 2013), so the case is Lake of legal authority. The ruling decided to refund it and charge the plaintiff the expenses and the defendant's attorneys, the jurists (sin. ta. yeh.) and (heh. mim. sin.) a sum of (100,000 dinars) divided between them equally and the rule was decisively on the basis of article (94) of the Constitution and unanimously, the decision had made clear public on 16/12/2015.